

# Recent Case Report

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## People v. C.S.A.

(2010) \_\_ Cal.App.4<sup>th</sup> \_\_ [2010 WL 324442]

### Issue

Are prosecutors bound by an agreement between officers and an informant that charges would be dismissed if the informant provided the officers with information?

### Facts

After C.S.A. was charged with a felony and related probation violations in Sonoma County, officers with a local police department promised him that the charges would “go away” if he “worked with and provided information” to them. C.S.A. accepted the deal and furnished the requested information.

It turned out that Sonoma County prosecutors were unaware of the agreement and, when C.S.A. appeared in court, they refused to drop the charges. So C.S.A. filed a motion to dismiss which the trial judge granted. The judge reasoned that, even though prosecutors were not parties to the agreement, it is enforceable against them if the officers had “apparent authority” to carry out their promise. The court then ruled that the officers did, in fact, have apparent authority because a reasonable person in C.S.A.’s position would have believed that, given the close working relationship between officers and prosecutors, the officers had the authority to make his legal problems “go away.”

### Discussion

At the outset, the court noted that there are three types of agreements between, on the one hand, defendants, informants, and suspects; and, on the other, officers or prosecutors. First, there are immunity agreements between prosecutors and prosecution witnesses in which prosecutors essentially guarantee that the witness will suffer no adverse legal consequences as the result of providing truthful testimony in court.<sup>1</sup> Second, there are plea agreements between prosecutors and defendants in which the prosecutors promise to drop or reduce certain charges in return for a defendants’ change of plea. Plainly, immunity and plea agreements are enforceable only if prosecutors had agreed to the terms.

The third type of agreement is the “cooperation agreement” between officers and a would-be informant who promises to provide information or some other service in return for some consideration, such as a promise to notify prosecutors or the sentencing judge that the informant had been cooperative. This was the type of agreement at issue in C.S.A.

As noted, the trial judge ruled that the cooperation agreement between the officers and C.S.A. was enforceable because C.S.A. reasonably believed that the officers did, in

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<sup>1</sup> See *In re Williams* (1994) 7 Cal.4<sup>th</sup> 572, 609 [“[T]he prosecution has a statutory right, incident to its charging authority, to grant immunity and thereby compel testimony”]; *People v. Thompson* (1983) 145 Cal.App.3d 918, 923 [“The decision to initiate the request for immunity is vested exclusively in the district attorney; the prosecution alone controls the invocation of the immunity statute.”].

fact, have the authority to drop the charges (even though they didn't). But the Court of Appeal ruled that apparent authority is insufficient—that such an agreement is enforceable only if the officers had *actual* authority to do what they promised. It then ruled that, because officers lack actual authority to dismiss or reduce charges, the agreement with C.S.A. was not enforceable. As the court explained, “[T]he prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor who ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”<sup>2</sup>

There is, however, one exception to this rule, although the court pointed out that it is “seldom seen.” Specifically, a cooperation agreement based on apparent authority may be enforced if it induced the informant to give up a constitutional right that implicates due process. Said the court, “[T]he detrimental reliance required to enforce an unauthorized cooperation agreement must be more than simply providing the requested or specified cooperation. A defendant must harm himself in a constitutional sense, such as providing incriminating statements or other evidence the prosecution can use against him.”

The court then ruled that, because C.S.A. was not required by the agreement to do or say anything that had “constitutional consequences,” the agreement was unenforceable. “We conclude,” said the court, “the law enforcement officers here had no authority to promise defendant the felony charge and related probation violations would be dismissed upon his cooperation. We also conclude this unauthorized promise cannot be enforced on due process grounds because defendant’s reliance thereon did not have any constitutional consequences.” POV

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<sup>2</sup> Quoting from *People v. Eubanks* (1996) 14 Cal.4<sup>th</sup> 580, 588-89.